

§ 38.77

§ 38.77 Who is responsible for developing and publishing complaint processing procedures for service providers?

The Governor or the LWIOA grant recipient, as provided in the State's Methods of Administration, must develop and publish, on behalf of its service providers, the complaint processing procedures required in § 38.76. The service providers must then follow those procedures.

§ 38.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?

Yes. If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

- (a) A statement of the reasons for that determination; and
- (b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

§ 38.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?

If, during the 90-day period, the recipient issues its Notice of Final Action, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or his/her representative may file a complaint with the Director within 30 days after the date on which the complainant receives the Notice.

§ 38.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

If, by the end of 90 days from the date on which the complainant filed the complaint, the recipient has failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director within 120 days of the date on which

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the complaint was filed with the recipient.

§ 38.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?

(a) Yes. The Director may extend the 30-day time limit:

- (1) If the recipient does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director, as described in § 38.76(b)(5)(ii); or
 - (2) For other good cause shown.
- (b) The complainant has the burden of proving to the Director that the time limit should be extended.

§ 38.82 Does the Director accept every complaint for resolution?

No. The Director must determine whether CRC will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

- (a) It has not been timely filed;
- (b) CRC has no jurisdiction over the complaint; or
- (c) CRC has previously decided the matter.

§ 38.83 What happens if a complaint does not contain enough information?

(a) If a complaint does not contain enough information, the Director must try to get the needed information from the complainant.

(b) The Director may close the complainant's file, without prejudice, if:

- (1) The Director makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or
- (2) The complainant does not provide the needed information to CRC within the time specified in the request for more information.

(c) If the Director closes the complainant's file, he or she must send written notice to the complainant's last known address.

§ 38.84 What happens if CRC does not have jurisdiction over a complaint?

If CRC does not have jurisdiction over a complaint, the Director must:

- (a) Notify the complainant and explain why the complaint falls outside the coverage of the nondiscrimination

and equal opportunity provisions of WIOA or this part; and

(b) Where possible, transfer the complaint to an appropriate Federal, State or local authority.

§ 38.85 Are there any other circumstances in which the Director will send a complaint to another authority?

Yes. The Director refers complaints to other agencies in the following circumstances:

(a) Where the complaint alleges discrimination based on age, and the complaint falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, then the Director must refer the complaint, in accordance with the provisions of 45 CFR 90.43(c)(3).

(b) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIOA or this part and by one or more of the laws listed below, then the complaint is a “joint complaint,” and the Director may refer it to the EEOC for investigation and conciliation under the procedures described in 29 CFR part 1640 or 1691, as appropriate. The relevant laws are:

(1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e-17);

(2) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));

(3) The Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, *et seq.*); and

(4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*).

(c) Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a Federal grantmaking agency other than the Department, but that participates as a partner in a One-Stop delivery system, the following procedures apply:

(1) Where the complaint alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the Federal grantmaking agency, then CRC and the grantmaking agency have dual jurisdiction over the complaint, and the Director will refer the complaint to the grantmaking agency for processing.

In such circumstances, the grantmaking agency’s regulations will govern the processing of the complaint.

(2) Where the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIOA, but not by any civil rights laws enforced by the Federal grantmaking agency, then CRC has sole jurisdiction over the complaint, and will retain the complaint and process it pursuant to this part. Such bases generally include religion, political affiliation or belief, citizenship, and/or participation in a WIOA Title I—financially assisted program or activity.

(d) Where the Director makes a referral under this section, he or she must notify the complainant and the respondent about the referral.

§ 38.86 What must the Director do if he or she determines that a complaint will not be accepted?

If a complaint will not be accepted, the Director must notify the complainant, in writing, about that fact, and provide the complainant his/her reasons for making that determination.

§ 38.87 What must the Director do if he or she determines that a complaint will be accepted?

If the Director accepts the complaint for resolution, he or she must notify the complainant, the respondent, and the grantmaking agency. The notice must:

(a) State that the complaint will be accepted;

(b) Identify the issues over which CRC has accepted jurisdiction; and

(c) Explain the reasons why any issues were rejected.

§ 38.88 Who may contact CRC about a complaint?

Both the complainant and the respondent, or their authorized representatives, may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released.